



Statutory Frameworks for Public Private Partnerships

*Virginia's PPA, NC SB
822, and Lessons Learned*

*North Carolina Legislative
Study Committee on PPP*

*Christopher D. Lloyd
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Presentation Overview

- What is a Public Private Partnership?
- Origins of the Virginia PPA
- Proposed NC Legislation ~ SB 822
- Lessons Learned and Challenges

What is a Public Private Partnership?

- What is it?

- An alternative procurement tool that allows public entities to more efficiently develop infrastructure and achieve better value for the taxpayer
- Vehicle to use design-build contracting practices
- Leverage private sector expertise to meet public goals
- Opportunity to foster innovative financing

- What it is NOT?

- A panacea that resolves all procurement issues
- A way to get something for nothing
- Privatization

Benefits of PPP Delivery

- Faster delivery of needed infrastructure projects
- Potential cost savings
- Greater private sector involvement in scope development
- Market based project development
- More local control over project development
- Private sector participation permits use of financing vehicles that 1) have no value to the public sector and/or 2) reduces the need for government debt
- Allows risk transfer to the private sector
- Public disclosure requirements provides for a more open procurement process

Why Pass a PPP Statute?

- Creates a consistent, predictable, and repeatable path for innovative project development
- Demonstrates legislative commitment to the process
- Ensures greater accountability and transparency
- Increases developer interest

Virginia's History with PPP

- PPTA passed in 1995
- PPEA passed in 2002
- Over 50 jurisdictions have adopted PPEA guidelines
- Over 100 projects completed or under review
- Project size of \$1 million to \$2 billion
- Mostly used in small/medium jurisdictions, for infrequent projects, or repeatable projects
- Most agree that time savings and risk shift are biggest benefits
- Most projects have been publicly funded

Virginia PP&EA Statute

- Process governed by enabling act and locally adopted guidelines
- Statute outlines governmental review powers, contractual issues, and public involvement
- Guidelines address proposal preparation, project specific requirements

Virginia PPEA Process Overview

- Public entity solicits for proposals or accepts unsolicited proposals
- Minimum of 45 day open competition period for unsolicited proposals
- FOIA protections for confidential information are negotiated
- Conceptual proposal outlines team qualifications, proposed scope, proposed scope and public benefits
- Public entity may levy a proposal review fee on both solicited and unsolicited proposals
- Proposal review fee is used to cover procurement costs

Virginia PPA Process Overview

- All competing proposals are reviewed, followed by a downselect
- Detailed proposals are requested -- often relies on recommendations of outside/inside advisors
- Detailed proposals start to lock in project scope, costs, schedule
- Leads to an interim or comprehensive agreement with one firm
- Significant requirements for public notification and hearings

How Does SB 822 Differ from VA PPEA?

- Allows for local and state government to solicit proposals for project development and/or operation ~ no UNSOLICITED PROPOSALS
- No legislative review panel for state projects
- Maintains current state laws on retainage
- Requires payment and performance bonds per existing law
- Requires governing body to set minority/small business participation requirements
- Eminent domain power retained by government ~ no new powers

Issues to Consider

- Should minority contracting goal be mandated?
- Role of State Construction Office/Department of Insurance
- Unsolicited proposals
- Stipend for unsuccessful bidders
- How do we make it more “green” friendly?
- Should there be a minimum/maximum project size?
- What is the role of the Local Government Commission?
- Remove restrictions on a qualifications based selection

Lessons Learned

- Overly prescriptive solicitations often fail
- In-state contractors are often the biggest winners
- Governmental financial participation is essential
- Every project requires an internal champion
- No company dominates the field
- Developing standardized agreements and contracts significantly improves review timetable

Challenges

- Ensuring that PPEA meets federal competition requirements (when federal money is involved)
- Addressing concerns of smaller contractors
- Overcoming baggage of previous procurement “reforms”
- Taking PPEA beyond the incorrect perception that it is a financing tool

THE END

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